

South Dakota
Department of Revenue



onstruction Contractors and Subcontractors Manual

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Introduction	3
Registration of Corporations	
Commercial Licensing and Registration	4
In-state Contractors	
Out-of-State Contractors	
The International Registration Plan (IRP)	
Exempt Vehicles	
Oversize and Overweight Vehicles	
South Dakota Taxes	5
Fuel Tax/Highway Contractor License	
Contractors' Excise Tax	
Sales/Use Tax	
South Dakota Labor Laws	7
Unemployment Insurance	
Worker's Compensation	
Environmental Regulations	9
Gravel Pits	
Asphalt Batch Plants, Concrete Plants, and Rock Crushers	
Construction Sites	
Dewatering Activities	
Pumping Water	
Storage Tanks	
Fuel and Chemical Spills	
Storage of Regulated Substances	
Demolition or Renovation of Buildings	
Contact Information	11

Welcome to construction contracting in South Dakota. As a member of the construction industry, you play an important role in creating and maintaining South Dakota's infrastructure.

Before you consider bidding for a contract or beginning construction, you should be aware of several important state laws and policies that must be followed. This brochure explains four general areas affecting both in-state and out-of-state prime contractors and subcontractors involved in construction: commercial licensing and registration, taxes, labor laws and environmental regulations.¹

Registration of Corporations

If you are a South Dakota corporation you must register with the Secretary of State's office. If you are incorporated in another state you must apply for certificate of authority in order to do business in South Dakota. For more information on the registration of corporations, contact the office of the Secretary of State at (605) 773-4845.

¹ This brochure examines only state regulations. Local regulations or licensing requirements are not reviewed here. Contractors should determine local requirements before beginning work.

Any vehicle used to transport any item for business purposes, unless it qualifies as exempt, must be commercially licensed in South Dakota². License types differ for in-state contractors and out-of-state contractors. Licenses must be purchased prior to any movement.

In-State Contractors

If you are an in-state contractor, you may fulfill your vehicle licensing requirements by obtaining in-state commercial licenses from your local county treasurer. You may also license any commercial vehicle by participating in the International Registration Plan.

Out-of-State Contractors

If you are an out-of-state contractor, you may license vehicles commercially through temporary permits or by participating in the International Registration Plan. Temporary permits are issued by both the South Dakota Highway Patrol and local county treasurers for 30-day increments. For instance, if you plan to be in-state for 55 days you would purchase a 60-day permit. You may purchase up to 360 days per permit for each vehicle you temporarily license in South Dakota. For more information about temporary permits, log onto the web at www.sdtruckinfo.com or contact the 24-hour Permit Center at (605) 698-3925.

The International Registration Plan (IRP)

The International Registration Plan is a commercial licensing agreement among 59 states and Canadian provinces. When you register a vehicle with the IRP in your home state, you simultaneously register the vehicle in all of the other member states in which you choose to travel. You then pay a single licensing fee to your home state, which distributes the fee proportionately to other member states in which you travel, based on the percentage of miles traveled in each state and that state's fee schedule. For more information about the IRP, log onto the web at www.sdtruckinfo.com or contact your state's commercial licensing office or call the South Dakota Office of Commercial and Prorate Licensing at (605) 773-4111.

Exempt Vehicles

Vehicles such as graders, bulldozers and other similar heavy equipment that will remain on the job-site throughout the duration of a construction project may not have to be commercially licensed. If you have questions about whether a vehicle qualifies as exempt or not contact the state's Office of Commercial and Prorate Licensing at (605) 773-4111.

Oversize and Overweight Vehicles

Vehicles that exceed the legal size and/or weight limits must have a special permit. To obtain such a permit or for more information about oversize and overweight vehicles, contact the South Dakota Highway Patrol on the web at www.hp.state.sd.us or at (605) 773-4578 or the Permit Center at (605) 698-3925 or 1-800-637-3255 (in-state only).

Permits can also be obtained through South Dakota's Automated Permitting System at www.sdtruckinfo.com.

In State Commercial License



TEMPORARY COMMERCIAL MOTOR VEHICLE PERMIT C 18576

ISSUE DATE _____			
EXPIRATION DATE _____			
ISSUED TO: _____			
(NAME)	(ADDRESS)		
YEAR	VEHICLE MAKE	TYPE	LICENSE NO.
VEHICLE SERIAL NUMBER		THIS PERMIT CAN BE PURCHASED FOR A VEHICLE WHICH IS CURRENTLY REGISTERED AS NON-COMMERCIAL	
PERMIT INFORMATION		TONNAGE PERMITTED:	FEE COLLECTED:
I HEREBY CERTIFY THAT I AM THE OWNER, OPERATOR, OR CUSTODIAN OF THE ABOVE DESCRIBED VEHICLE AND UNDERSTAND AND AGREE TO OPERATE THIS VEHICLE IN ACCORDANCE WITH THE PROVISIONS OF SDCL 32-9-22.			
SIGNED _____			
SUBSCRIBED AND SWORN TO THIS _____ DAY OF _____, 19 _____			
ISSUING AGENT _____			

FORWARD TO D.M.V. PERMIT SECTION

² Personal pickup trucks hauling over 500 lbs. and used for commercial purposes must be commercially licensed.

Fuel Tax/Highway Contractor License

A highway contractor, whether a person, partnership or corporation, engages in highway construction work. In order to obtain a public highway or street contract awarded by the state of South Dakota, or by a county, a township or a municipality within the state, a bidder must be a licensed highway contractor.

Under South Dakota law, highway construction means all work performed by vehicles, machinery or equipment within the right-of-way in the construction, reconstruction, repair or maintenance of public highways. “Public highways or roads” are defined as any way or place, including waterways and snowmobile trails, open to the use of the public for vehicular, snowmobile or watercraft travel. This definition includes those ways or places temporarily closed for construction, reconstruction, maintenance or repair.

Taxable Issues

A highway contractor may have several different fuel uses. The following list identifies some of the most common uses and taxing situations.

Diesel Use

- Contractors may dispense only undyed diesel fuel into licensed vehicles, regardless of how or where the fuel is used.
- Undyed diesel fuel consumed off-road by licensed vehicles is subject to sales/use tax.
- All dyed diesel fuel purchased in South Dakota will include sales tax in the purchase price unless purchased by a farmer for agricultural purposes.
- Undyed diesel fuel consumed in stationary equipment within the road right-of-way or other equipment off-road is not subject to a refund of fuel tax. For this reason, a contractor may want to consider using dyed (untaxed) diesel fuel for these uses.

Gasoline/Gasohol Use

- Gasoline and gasohol consumed in licensed vehicles off-road, stationary equipment within the road right-of-way or other equipment off-road is subject to sales/use tax.

LPG Use

LPG consumed in licensed vehicles or movable equipment within the road right-of-way is subject to fuel tax.

LPG consumed in licensed vehicles off-road, stationary equipment within the road right-of-way or other equipment off-road is subject to sales/use tax.

Other Licenses That May Be Required

Depending upon their business activities, highway contractors may be required to obtain other fuel tax licenses as well as the contractor’s license.

- An **Importer’s license** is required if they purchase and bring fuel into South Dakota by truck or railcar.
- An **Exporter’s license** is required if they export or remove fuel from South Dakota by truck or railcar.
- A **Transporter’s license** is required if they transport fuel in or out of South Dakota in lots greater than 4,200 gallons.

See specific sections dealing with importer’s, exporter’s, and transporter’s licenses for more detailed information on these licenses.

For more information, contact the Division of Motor Vehicles’ Fuel Tax Section at (605) 773-5335.

Contractors' Excise Tax

All construction contractors in South Dakota, whether prime contractors or subcontractors, must hold a contractors' excise tax license. This license must be obtained BEFORE beginning work in South Dakota. There is no charge for this license but you must maintain adequate records and file tax returns as required. You may also have to post a bond as a guarantee of tax payment. To obtain a state tax license, log onto the web at www.state.sd.us/drr to complete the online application. If you do not have access to the Internet contact the Department at 1-800-TAX-9188.

Contractors'
Excise Tax
2%

The contractors' excise tax is a 2% tax imposed upon the gross receipts of contractors who are engaged in construction services or realty improvements in South Dakota. The contractors' excise tax and the contractor's sales and use taxes are part of the contractor's total bill and are collectible from all entities, both public and private. State law allows contractors to list their tax expense as a separate line item on all contracts and bills.

Sales/Use Tax

Sales/Use Tax
4%

South Dakota also levies a state sales and use tax of 4 % plus applicable municipal tax on purchases of materials and equipment and sales taxable services consumed by contractors in the fulfillment of contracts, including state contracts (even though the state is considered a tax-exempt entity). For example, fuel that is not subject to fuel tax but is consumed in the fulfillment of a contract is subject to sales/use tax.

In most cases, when a contractor is not subject to sales tax they are subject to use tax. For example, if you purchase materials or equipment for a state construction project and take immediate title to them you are subject to state sales tax. However, if you purchase the materials or equipment for the state, acting only as the purchasing agent, and the state takes title to them, the purchase is free from state sales tax. If the materials or equipment are later used in your construction project you become liable for state use tax.

Use Taxes on Construction Equipment

If you are an out-of-state contractor and intend to bring equipment into the state for use in fulfilling your contract obligation, you may be liable for use tax on the value of such equipment. You may be exempt from all or a portion of this tax if you can prove that it has already been paid to another state with which South Dakota maintains reciprocity.

New or used equipment delivered into South Dakota is subject to sales or use tax on the purchase price. The purchaser of the equipment owes the 4% state use tax, plus applicable municipal tax, if the vendor does not collect the applicable sales tax.

A business bringing equipment less than seven years old into South Dakota that was purchased for use in another state owes the 4% state use tax, plus applicable municipal tax on the fair market value of the equipment when it is brought into South Dakota. South Dakota allows credit for sales or use tax paid the other state.

Equipment that is more than seven years old when brought into the state by the person who purchased such property for use in another state is exempt from the use tax. The manufacture date, if documented, or the date of the purchase by the person bringing the property into this state determines the equipment's age.

To determine if use tax is due on your equipment, file an equipment list with your application for a contractors' excise tax license. This list must indicate all of the equipment to be used in fulfilling your contract, including owned and leased equipment.

Local Taxes

Several municipalities also impose a local sales/use tax in addition to the state sales/use tax.

All construction contractors in South Dakota must provide unemployment insurance and worker's compensation coverage for employees engaged in construction projects within the state. Out-of-state businesses that bring employees into South Dakota to work here for LESS THAN 90 DAYS do not have to pay South Dakota unemployment insurance on those employees because they are paying unemployment insurance in the employee's home state.

Unemployment Insurance

If an employer is liable by FUTA (Federal Unemployment Tax Act) in another state, that employer automatically becomes liable for reporting to South Dakota when they commence work in this state. An employer who is not liable in another state becomes liable for paying unemployment taxes in South Dakota after paying \$1500 or more in gross wages during a calendar quarter or has a full-time or part-time employee for any part of a week for 20 or more weeks. Contributions are payable quarterly and vary from contractor to contractor.

Currently, new contractors in South Dakota contribute a total of 6.7% of the first \$7,000 per year, per employee. This means employers pay a maximum UI tax of \$469 per employee for 2006. Beginning in 2007, the wage base will increase as follows:

- 2007 wage base = \$8,500
- 2008 wage base = \$9,000
- 2009 wage base = \$9,500
- 2010 wage base = \$10,000

If, after one year, the employer's total contributions exceed unemployment benefits paid to employees, the rate will decrease to a total of 3.7% per year, per employee on the taxable wage base for that year (see table above). This rate will apply for the 2nd and 3rd years until the employer becomes eligible for a contribution rate based on three years of contributions and unemployment benefits paid out to employees.

Workers must meet specific criteria to qualify as independent contractors rather than employees, who are reportable for unemployment insurance tax purposes. Please contact the Department of Labor/UI Tax at the number below to insure that your workers have been properly categorized.

Quarterly wage reports and contributions are due by the last day of the month immediately following the reporting period.

1 st Quarter January 1 through March 31	Report due by April 30
2 nd Quarter April 1 through June 30	Report due by July 31
3 rd Quarter July 1 through September 30	Report due by October 31
4 th Quarter October 1 through December 31	Report due by January 31

Employers must keep records containing the following information for the current calendar year and the three preceding years:

- Employee name and Social Security number
- Work location
- Hiring and termination dates
- Hours worked
- Wages earned

For more information or to set up an unemployment insurance account, please contact the Department of Labor Division of Unemployment Insurance Tax at (605) 626-2312 or go to www.sdjobs.org.

New Hire Reporting

Federal and state laws require that you register newly hired employees with the New Hire Reporting Center (NHRC). NHRC was established to match the names of newly hired employees against child support records to locate absent parents and to establish or enforce child support orders.

All employers must report all employees to the New Hire Reporting Center within 20 days of their first day of work. The report must include the employee's social security number, name and address. It must also include the employer's federal identification number, name and address. Employees must be reported again if they were rehired 30 days or more after a termination or lay-off.

Employers who have employees in two or more states have two reporting options. Please call the number below to discuss those options.

Employers who intentionally fail to comply with this requirement commit a petty offense which may result in monetary penalties.

Employers may report newly hired employees by internet at www.sdjobs.org, or by fax, phone, mail or diskette and cartridge. To obtain more information, please contact the New Hire Reporting Center at 1-888-827-6078 or by fax at 1-888-835-8659. The mailing address is as follows:

New Hire Reporting Center
SD Department of Labor
PO Box 4700
Aberdeen, SD 57402-4700

Worker's Compensation

You must carry worker's compensation insurance for all employees engaged in construction projects in the state. This coverage is designed to protect both the employer and the employee. Covered employees are entitled to receive benefits if injured on the job. In return, employees forfeit the right to sue an employer for job-related injuries.

Most contractors obtain worker's compensation coverage by purchasing an insurance policy. Some contractors, however, choose to consider themselves "self-insurers". These employers must prove that they are financially secure enough to pay full benefits for any employee injuries. Consequently, they are certified and regulated by the Department of Labor.

Contractors who fail to obtain worker's compensation coverage risk substantial financial losses. State law allows an injured employee or a deceased employee's family to collect all medical and rehabilitation expenses, as well as double disability or death benefits, from an uninsured contractor. A disabled employee or surviving family may also elect to sue a contractor for an even larger sum.

For more information about South Dakota's worker compensation laws, contact the Department of Labor's Division of Labor and Management at (605) 773-3681.

Depending on the work performed, construction contractors may have to obtain special permits or follow specific procedures to comply with South Dakota's environmental regulations. Typical environmental requirements for construction activities are listed below. For more detailed information on these activities, please visit the Department of Environment and Natural Resources website at <http://denr.sd.gov> or go directly to DENR's Permitting and Regulation Guide on the Internet at <http://denr.sd.gov/documents/envprmitguide.pdf>. Applications for most of these activities can be downloaded off of this site.

Gravel Pits

If you intend to mine sand, gravel or rock for use in construction, you must obtain a state mining license and coverage under the general permit for storm water discharges associated with industrial activities. For more information on gravel pits, contact the Department of Environment and Natural Resources (DENR) at (605) 773-4201 or 1-800-848-8203. For more information on storm water discharges, contact DENR at (605) 773-3351 or 1-800-737-8676.

Asphalt Plants, Concrete Plants and Rock Crushers

If you intend to operate a processing or fuel-burning unit that has a stack or vent such as an asphalt plant, concrete plant or a rock crusher, you may need an individual air quality permit or may need to obtain coverage under one of the general permits for air quality and storm water controls DENR has issued. In an effort to streamline the permitting process and reduce the regulatory burden, DENR has issued general permits for many of these units that cover both air quality and storm water control requirements. To obtain an individual permit, coverage under one of the general permits, or for more information, contact DENR at (605) 773-3151 or 1-800-848-8203.

<http://denr.sd.gov/des/aq/airpermits.aspx>

Construction Sites

If you will disturb one or more acres of land with construction activities, you must obtain coverage under the general permit for storm water discharge from construction activities. To obtain coverage under this permit, a contractor must develop a plan to prevent runoff of pollutants during a storm event (rainfall, spring thaw, etc.). For more information, contact DENR at (605) 773-3351 or 1-800-737-8676. Used oil generated during on-site maintenance of construction vehicles is regulated by DENR's Waste Management Program. For more information, contact DENR at (605) 773-3153 or 1-800-438-3367.

Dewatering Activities

If you will be dewatering construction areas and discharging this water to a drainage or stream, you must obtain coverage under the general permit for temporary discharging activities. To obtain coverage under this permit or for additional information, contact DENR at (605) 773-3351.

Pumping Water

If you intend to pump water from its source such as a mine site, dewatering trench, well or a stream or lake for construction, testing, or drilling purposes, a temporary or permanent water right is required. To obtain these permits contact DENR at (605) 773-3352.

Storage Tanks

If you will use stationary aboveground or underground storage tanks to hold a regulated substance (such as motor fuel), you must register them with DENR. To register a storage tank or to obtain more information, contact DENR at (605) 773-3296.

Fuel and Chemical Spills

Because of the danger presented by fuel, pesticides and chemical spills, South Dakota requires the reporting of any spill or release of any regulated substance greater than 25 gallons or less if it can get into surface or ground-water. For more information about reporting or cleanup of spills, contact DENR at (605) 773-3296.

Storage of Regulated Substances

Contractors who store or maintain hazardous substances such as chemicals used for cleaning, petroleum products or compressed gases must report those substances to the Department of Environment and Natural Resources. This reporting process is a requirement of the federal Superfund Amendments and Reauthorization Act (SARA) passed by Congress in 1986. For more information about compliance with SARA Title III chemical reporting requirements, contact DENR at 1-800-433-2288.

Demolition or Renovation of Buildings

Demolition or renovation of structures or buildings require the owner or operator to determine if asbestos is present by having a qualified asbestos person conduct an inspection. Notification of demolition or renovation activities must be submitted to DENR for approval. All such debris must be disposed of at a permitted solid waste facility. For more information, contact DENR at (605) 773-3153 or 1-800-438-3367.

Plans and Specifications Approval

Below is a list of projects that require department approval of engineering plans and specifications and department contacts for those projects:

- Above and underground storage tanks Doug Miller (605) 773-3296
- Dams Tim Schaal (605) 773-3352
- Feedlots Kent Woodmansey (605) 773-3351
- Mining facilities and pollution controls Mike Cepak (605) 773-4201
- On-site wastewater or septic systems Kent Woodmansey (605) 773-3351
- Solid waste facilities Jim Wendte (605) 773-3153
- Drinking water treatment and distribution with DENR funding Stacy Froelich (605) 773-4216
- Drinking water treatment and distribution without DENR funding Mark McIntire (605) 773-3754
- New drinking water system planning and capacity development Paul Oien (605) 773-3754
- Wastewater treatment and collection with DENR funding Mike Perkovich (605) 773-4216
- Wastewater treatment without DENR funding Kelli Buscher (605) 773-3351
- Wastewater collection without DENR funding Kent Woodmansey (605) 773-3351

If you have questions about whether a project is a work of sanitary significance or needs department approval, we encourage you to contact the specific DENR contact from the list above for that type of project.

Various state agencies frequently conduct audits or on-site inspections to ensure that licensing and permit requirements are being met. These activities can range from a Department of Revenue audit for fuel tax liability to a Department of Environment and Natural Resources compliance inspection. For more information about license and permit enforcement, contact the proper state agency.

South Dakota Department of Revenue

445 E. Capitol Avenue
Pierre, SD 57501-3100
www.state.sd.us/drr
www.sdtruckinfo.com
1-800-829-9188

South Dakota Department of Labor

700 Governors Drive
Pierre, SD 57501-2291
www.state.sd.us/dol
(605) 773-3101

South Dakota Department of Environment and Natural Resources

523 East Capitol Avenue
Pierre, SD 57501
denr.sd.gov
(605) 773-3151 or 1-800-GET-DENR (438-3367)

South Dakota Department of Transportation

700 East Broadway Avenue
Pierre, SD 57501
www.sddot.com
(605) 773-3265

South Dakota Highway Patrol

118 West Capitol Avenue
Pierre, SD 57501
www.hp.state.sd.us
(605) 773-3105 or (605) 773-4578

State (SDCL 20-13) and federal (Title VI of the Civil Rights Act of 1964, the Rehabilitation Act of 1973 as amended, and the Americans with Disabilities Act of 1990) laws require that the Department of Revenue provide services to all persons without regard to race, color, creed, religion, sex, disability, ancestry or national origin.

Information for South Dakota Construction Contractors and Subcontractors is written and designed to make South Dakota laws and regulations accessible to the general public.